THE TRAVANCORE VARNAVA BILL.

Whereas it is deemed necessary to define and amend the law relating to marriage, succession and partition among the Varnavas, it is hereby enacted as follows:

CHAPTER I.

PRELIMINARY.

I. (1) This Act may be called the Travancore Varnava Act of 11

(2) It shall come into force on

(3) It shall apply to all Varnavas domiciled in Travancore and to such Varnavas whether so domiciled or not as have or shall have marital relations with Varnavas domiciled in Travancore.

II. In this Act, unless there is something repugnant in the subject or context:—

(1) 'Varnava' includes the members of all communities called Pathiyan, Vannan (Mannan), Ettali, Velan, Purathon, Chayakkaran, Paravan, Nerian, and others known or recognised as Varnavas.

(2) 'Minor' means a person who has not completed eighteen years of age.

CHAPTER II.

MARRIAGE AND ITS DISSOLUTION.

III. The conjugal union of a Varnava male, subject to the restrictions of consanguinity and affinity according to custom with a Varnava female, openly solemnised according to recognised customs and usage whether before or after the commencement of this Act, shall be deemed to be a valid marriage for all legal purposes:

Provided that, no conjugal union so solemnised after the date on which this Act comes into force shall, in the case of a male who has not completed eighteen years of age, or of a female who has not completed sixteen years of age be deemed to be a valid marriage unless it takes place with the consent of his or her legal guardian or unless such conjugal union is adopted and continued after the attainment of eighteen or sixteen years of age, as the case may be, by the party or parties concerned.

ILLUSTRATIONS.

(a) C, a male, commits adultery with B, who has married A, or entices away B who, he knows, has married A. C is liable to punishment under Section 500 or 501, Travancore Penal Code.

(b) C, a male, marries B, who has married A, during the continuance of A's marriage. Such marriage being void

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under Section 4, B and C are liable to punishment for bigamy under Section 497 Travancore Penal Code, and abetment thereof respectively.

(c) A, a male, having sufficient means, neglects or refuses to maintain B whom he has married. B is entitled to apply for maintenance under Chapter XXXV, Criminal Procedure Code.

(d) B, a female, who has married A refuses to co-habit with the latter without just cause. A may bring a civil suit for restitution of conjugal rights.

IV. The subsequent marriage of a male or of a female during the continuance of a prior marriage and performed after the coming into force of this Act shall be void.

V. A marriage is dissolved only in one of the following ways, that is to say :—

(i) by the death of either party ; or

(ii) by mutual consent evidenced by a registered instrument ; or

(iii) by a formal order of dissolution, as hereinafter provided, on any of the following grounds, namely :—

(a) adultery, or

(b) change of religion, or

(c) incurable disease, physical or mental, or

(d) habitual cruelty to wife.

Explanation:—"Habitual cruelty" shall include wilful desertion for a period of two years or more and shall also include persistent neglect on the part of the husband to maintain the wife.

VI. (1) A husband or wife may present a petition for dissolution of the marriage under Section 5, clause (iii) stating the facts on which the claim to have such marriage dissolved is founded, in the District Court within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain, or, if the respondent resides, carries on business, or personally works for gain in any place outside Travancore, in the District Court within whose jurisdiction the petitioner resides.

(2) A wife, though a minor, shall be competent herself to apply for dissolution of marriage if she has completed sixteen years of age.

VII. A copy of such petition as aforesaid shall be served on the respondent at the expense of the petitioner, and in the manner provided for the service of summons on a defendant in the Code of Civil Procedure.

VIII. Three months after the service of the copy as aforesaid —

(i) if the petition is not withdrawn in the meantime, and if the respondent does not agree to the dissolution of the marriage, the Court shall enquire into the petition and shall allow or dismiss the petition as it thinks fit.

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(2) if the petitioner is the husband and his prayer is granted, the Court shall in cases falling under Sub-clause (c) of clause (iii) of Section 5, award such compensation to the wife or such monthly allowance until her re-marriage as would be proper under the circumstances, having regard to his position, means and circumstances.

(3) if the petitioner is the wife and her prayer is granted, the Court shall award such compensation to the wife or such monthly allowance until her re-marriage as would be proper under the circumstances of the husband.

IX. The provisions contained in the Code of Civil Procedure shall, as far as possible, apply to an enquiry under Section 8:

Provided that all proceedings under Section 8, either before a Court or before a Commission appointed by a Court, shall be held *in camera*, and that the publication of any account of such proceedings except the final order and the decree thereon, shall be punishable with simple imprisonment for a term of six months or with fine which may extend to one thousand rupees or both.

X. Subject to the provisions of the Code of Civil Procedure and the Limitation Act applicable to appeals from original decrees, an appeal shall lie to the High Court from an order granting or refusing dissolution of marriage or payment of compensation or monthly allowance under the provisions of Section 8.

XI. In so far as it awards payment of compensation or monthly allowance or costs, an order of the District Court or an order passed on appeal, shall subject to the provisions of the Limitation Act relating to the execution of decrees, be executable as a decree:

Provided, however, that an order of the District Court awarding compensation or monthly allowance, shall be executable only on payment of Court fee on the sum adjudged.

CHAPTER III.

Maintenance and Guardianship.

XII. The wife and minor children, except married daughters under the guardianship of their husbands, shall be entitled to be maintained by the husband or father as the case may be:

Provided that the wife shall not be entitled to maintenance if she lives in adultery or refuses to live with the husband without just cause or has changed her religion.

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XIII. (1) The husband shall be the legal guardian of his minor wife, and, save as regards married daughters under the guardianship of their husbands, the following persons in the order named, shall be the legal guardians of the minor children in respect of their person and property, namely, the father, the mother, the father's brothers and the major male children of the father's brothers.

(2) Where a female has minor children by a former husband deceased or divorced, she shall be the legal guardian in respect of their person as also of the separate property belonging to them.

CHAPTER IV.

Intestate Succession.

XIV. The provisions of this Act shall not apply to any intestacy occurring before the date on which this Act comes into force, nor shall these provisions divert rights which have already become vested.

XV. For the purpose of succession there is no distinction between ancestral property and separate or self-acquired property.

XVI. Unless a contrary intention is expressed in the instrument of gift, bequest, or partition, a Varnava woman shall acquire absolute right in respect of property obtained by gift, devise, partition or inheritance.

XVII. No person shall by marriage acquire any interest in the property of the person whom he or she marries nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried.

XVIII. No person shall on any ground of disability be excluded from inheritance or from a share of the joint family property on partition.

XIX. No lineal descendant of any Varnava shall acquire by birth any interest in the property inherited or acquired by such Varnava.

XX. For the purpose of this and the succeeding chapter the undivided share of a member of a joint family in joint family property determined as at the time of such member's death shall be treated as such member's separate property.

XXI. For the purpose of succession there is no distinction between those who have been or are actually born at the time of the deceased persons death and those who at the

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time of his death were only conceived but who have subsequently been born alive. Nor is there except when otherwise expressly provided for any distinction between those who are related to him by the full-blood and those who are related to him by the half-blood.

XXII. A person is considered to die intestate in respect of all property of which such person has not made a testamentary disposition which is capable of taking effect.

XXIII. On the death of a Varnava male leaving him surviving a widow and also children or the lineal descendants of deceased children or both they shall take the whole of the self-acquired and separate property left undisposed of by him at his death. In the absence of the widow the children and the lineal descendants of deceased; children shall take the whole and in the absence of the widow and the children, the lineal descendants of deceased children shall take the whole.

XXIV. The distribution of the estate under Section 23 shall be according to the following rules :—

(i) The widow or widows if there are more than one shall each be entitled to a share equal to that of a son or daughter.

(ii) Sons and daughters shall take the property in equal shares :—

Provided that, if a son or daughter shall have predeceased the intestate the lineal descendants of such child shall take the share which such child would have taken had it survived the intestate.

(iii) Grand-children shall take in equal shares what their father or mother would have taken had he or she survived the intestate. In like manner the property shall go to the surviving lineal descendants of the intestate, where they are all in the decree of great grand-children to line or in a more remote degree.

ILLUSTRATIONS.

(a) Z dies intestate leaving A and B two widows, D a son, E a daughter and the lineal descendants of a deceased son F. A, B, D and E each gets one-fifth of the estate and the lineal descendants of F together get one-fifth of the estate.

(b) Z dies leaving him surviving A a son B a daughter, two grand-children by a deceased daughter C and two grand-children and one great grand-child by a deceased son D. A and B shall each be entitled to

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one-fourth of Z's estate, each of the grand-children by C shall be entitled to one-eighth; each of the grand-children by D shall be entitled to one-twelfth; and the great grand-child by D shall be entitled to one-twelfth of Z's estate.

XXV. On the death of a Varnava male leaving him surviving no children or lineal descendants of deceased children but only his widow and his father one-half of his property shall devolve on his father and the other half on his widow. In the absence of the widow the father shall take the whole.

XXVI. On the death of a Varnava male leaving him surviving neither his father nor his lineal descendants but only his widow and his mother one-half of his property shall devolve on his mother and the other half on his widow. In the absence of the mother the widow shall take the whole and in the absence of the widow the mother shall take the whole.

XXVII. On the death of a Varnava male leaving him surviving none of the heirs mentioned in Section 23.25 and 26 but only his brother or brothers and the lineal descendants of deceased brothers they shall take the whole property left undisposed of by him at his death.

XXVIII On the death of a Varnava male leaving him surviving none of the heirs mentioned in Sections 23, 26 and 27 but only his sister or sisters and the lineal descendants of deceased sisters they shall take the whole property left undisposed of by him at his death.

XXIX On the death of a Varnava male leaving him surviving none of the heirs mentioned in Sections 23,25,26,27 and 28 the whole property left undisposed of by him at his death shall be divided equally among those of his relatives who are in the nearest degree of kindred to him in the male line.

XXX. On the death of a Varnava female leaving her surviving her children or the lineal descendants of deceased children or both they shall take the whole of the self-acquired and separate property left undisposed of by her at her death.

XXXI. On the death of a Varnava female leaving her surviving none of her lineal descendants but only her husband, her father and her mother, the whole property left undisposed of by her at her death shall be divided equally among them. In the absence of the husband the father and mother shall take equally, and in the absence of the husband and father, the mother shall take the whole.

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XXXII. On the death of a Varnava female leaving her surviving none of the heirs mentioned in Sections 30 and 31, but only her brother or brothers and the lineal descendants of deceased brothers, they shall take the whole property left undisposed of by her at her her death.

XXXIII. On the death of a Varnava female leaving her surviving none of the heirs mentioned in Sections 30, 31 and 32 but only her sister or sisters and the lineal descendants of deceased sisters they sall take the whole property left undisposed of by her at her death.

XXXIV. On the death of a Varnava female leaving her surviving none of the heirs mentioned in Sections 30,31, 32 and 33 the whole property left undisposed of by her at her death shall be divided equally among those of her relatives who are in the nearest degree of kindred to her.

XXXV. The provisions contained in Section 24 shall, as far as may be, apply to the distribution of the estate among the heirs of the intestate mentioned in Sections 27, 28, 30,31, 32 and 33.

CHAPTER V.

Testamentary Succession.

XXXVI. Any Varnava may dispose of by Will the whole of his or her self-acquired or separate property.

CHAPTER VI.

Partition.

XXXVII. Subject to the claims if any of the heirs arising under Chapter IV to the undivided share of any deceased member determined as at the time of his or her death, every member of a joint family shall have the right to get his or her share from the joint family, by making a demand for the purpose and on such demand such member shall be entitled to such share in the joint family properties, as will fall to such member if a division per capita were made among all the members of the family on the date of such demand.

CHAPTER VII.

Supplemental Provisions.

XXXVIII. Nothing in this Act shall :—

(*a*) affect rights which have accrued according to law or custom before the date on which this Act comes into force.; or

(*b*) affect the existing rules of law, custom or usage except to the extent hereinbefore expressly provided for.

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Statement of Objects and Reasons.

There are a large number of people in the State who follow the traditional occupation of the washing cloths and observe the same social customs but who are known by different names in different parts of the country. Though they are differently called as Pathians, Vannans, Mannans, Ettalis, Velans, Purathon, Chayakkaran, Paravan or Nerian in different places they are really members of one community and follow almost the same customs and usages. Varnavar is a common caste name which has gained general acceptance among them. The beneficient measures adopted by Government for the amelioration of the condition of the backward communities in the State have resulted in a great awakening among these people and education is also making progress among them. They are all Makkathayis but the law of succession which obtains among them is extremely vague and unsettled. As these people live in different localities there is no chance of a uniform custom in this respect being built up among them or recognised by courts. Courts are also unwilling to recognise any usage or custom modifying the ordinary rules of Hindu Law which are really inapplicable to them. There is also no law which compels them to observe the sacredness of the marriage tie though they are Makkathayis. The personal laws of almost all the important communities in the State have been modified in accordance with their changing needs and customs. The Varnavas as a whole feel the great need for legislation like the others and this desire has also been expressed at several of their meetings. The All Travancore Varnava Association has also expressed the need for such legislation. Though their number, as compared to the major communities is small it is not possible for them to adopt the laws applicable to such communities. This Bill has therefore been drafted to meet the needs and wishes of all the classes of the Varnava community in the State. In framing the Bill case has however been taken to conform wherever possible to the provisions of law enacted in regard to other communities in the State so that it may not stand in the way of a future common legislation for all the different classes of His Highness the Maharaja's subjects.

I shall now refer to the particular provisions in the Bill.

CHAPTERS I to III.

Preliminary Marriage and its Dissolution etc.

In the definition of the term "Varnava" I have merely enumerated all those classes who are called Pathian, Vannan etc. as is not necessary to say anything more to identify the classes of people to whom this law is applicable. I have adopted the provision relating to marriage and its dissolution, and also maintenance and guardianship from the Ezhava, the Nanjinad Vellala and other Acts in force. These provisions have been so drafted as to be in accordance with the general desire of the community while conforming to the provisions of law made applicable to other communities in the State.

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CHAPTER IV.

Intestate Succession.

Though the people affected by this measure are Makkathayis and are supposed to be followers of the Hindu Mitakshara Law, the Mitakshara rules of succession are not followed by them. Certain provisions have therefore been rendered necessary to make it clear that the principles of Hindu Law should not be applied to them in regard to questions of successions. Such are the provisions contained in clauses 14 to 22. These provisions are also intended to do away with the distinction between 'ancestral' and 'separate' and 'self-acquired' property and the rules of survivorship and joint ownership under the Hindu Law. The rights of women are also placed on an equal footing with men. Clauses 23 to 35 deal with the line of succession to males and females. The scheme is different from the scheme of the Hindu Law, but agrees with the opinion and practice of the people as far as I know. The rules for the distribution of the estate are laid down in clauses 24 and 35.

CHAPTER V.

Testamentary succession.

Clause 36 gives complete testamentary power and requires no particular comment though Hindus as a whole are given the power under the Nair Act.

CHAPTER VI.

Partition.

It is not considered necessary to make elaborate provisions in respect of partition, particularly in view of the fact that clause 20 makes provision for succession to the undivided share of a member of a joint family. Clause 37 only provides that a demand by a member for his share has the effect of creating a severance of the joint status.

CHAPTER VII.

Supplemental provisions.

Clause 38 is intended to protect rights which have already accrued and to save existing rules of law or custom which have not been expressly modified by the provisions contained in the Act.

K. G. Narayana Panikar, B. A., B. L.
Member, Sri Chitra State Council.

S. Vaidyanatha Aiyar,
Secretary to the Sri Chitra State Council.

Council Office,
Trivandrum, 11th July 1945.

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NOTICE.

The following Bill, leave to introduce which was granted at the meeting of the Sri Chitra State Council held on the 8th February 1946, is published for general information.

Council Office,
February 1946.

S. VAIDYANATHA AIYAR,
Secretary to the Sri Chitra State Council.

THE INTEREST BILL.

Whereas it is expedient and necessary to pass an act empowering courts to award interest in certain cases, it is hereby enacted as follows :—

1. This Act is called the Interest Act of 1112.

2. It shall come into force at once.

3. Upon all debts of sums certain payable at a certain time or otherwise the court before which such debts or sums may be recovered may if it shall think fit allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable if such debts or sums be payable by virtue of some written instrument at a certain time or if payable otherwise then from the time when demand of payment shall have been made in writing so as such demands shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment provided that interest shall be payable in all cases in which it is now payable by law.

4. (1) In any proceedings tried in any court for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate not exceeding the current rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

Provided that nothing in this section—

(*a*) shall authorise the giving of interest upon interest; or

(*b*) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(*c*) shall affect the damages recoverable for the dishonour of bill of exchange.

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